



1 THE COURT: Cause No. 2015-515, the United States  
2 of America v. Daniel Nathan West.

3 Representing the United States in this matter?

4 MR. LEWIS: Vernon Lewis, Your Honor. Good  
10:58 5 morning.

6 THE COURT: And representing Mr. West?

7 MR. FAZEL: Ali Fazel, Your Honor. Good afternoon,  
8 Your Honor.

9 THE COURT: Good afternoon, sir -- Well, actually,  
10:58 10 it's "good morning". I am following your lawyer's  
11 statement. I should not do that. We still have -- I mean,  
12 he must be on some other time zone. Even with the change of  
13 time, we still have an hour left today, in time, an hour  
14 left before noon.

10:58 15 How are you doing, sir, and what is your name?

16 THE DEFENDANT: Daniel Nathan West.

17 THE COURT: Mr. West, you were before the Court  
18 previously and entered a plea of "guilty"; did you not?

19 THE DEFENDANT: Yes.

10:58 20 THE COURT: Do you recall what your plea of  
21 "guilty" -- what the charge was?

22 THE DEFENDANT: One count of wire fraud.

23 THE COURT: All right. And this arises out of a  
24 circumstance, an entanglement, where you were charged in a  
10:59 25 multiple-count indictment with various and sundry charges of

1 wire fraud. And I'm not sure if that totally completes all  
2 that the indictment said, but, certainly, there were any  
3 number of claims of wire fraud brought against you by the  
4 United States in this case. Correct?

10:59 5 THE DEFENDANT: Yes.

6 THE COURT: What is the status of the indictment  
7 out of Georgia at this time? Do you know?

8 MR. FAZEL: May I address the Court on that?

9 THE COURT: Is it still pending?

10:59 10 MR. FAZEL: It is, Your Honor.

11 THE COURT: Okay.

12 MR. FAZEL: Mr. Adam Hames -- that's H-a-m-e-s --  
13 he's a practicing lawyer in Georgia. He also practices in  
14 federal court in Georgia. He's licensed and in good  
10:59 15 standing. With the Court's permission, he's sitting at  
16 sidebar. He is here and available. He is representing  
17 Mr. West on that proceeding.

18 THE COURT: I don't have an interest in involving  
19 myself in it. I just wanted to make sure that -- were there  
10:59 20 a sentence imposed already in that case, I wanted to  
21 determine, in my own mind, what the impact, if any, would be  
22 in this particular case.

23 And what I understand from what you're saying  
24 is that no sentence has been imposed, the matter is still  
11:00 25 pending and the court is "free" -- I guess, might be a

1 word -- to proceed to sentencing in this case in the manner  
2 that it chooses. All right.

3 MR. FAZEL: Yes, Your Honor.

4 MR. LEWIS: Very briefly, Your Honor, on that  
11:00 5 issue.

6 THE COURT: Sure.

7 MR. LEWIS: There are, actually, two indictments  
8 pending in the state of Georgia. I have spoken with the  
9 prosecutor in those cases. They're waiting for this case to  
11:00 10 be resolved before they move forward. That's what I have  
11 been told.

12 THE COURT: Yeah. I suspected that would be the  
13 case. And I do have copies of both indictments. I believe  
14 probation might have supplied those to me.

11:00 15 All right. This plea was pursuant to a plea  
16 agreement entered into by yourself, Mr. West, along with the  
17 prosecutor in this case or, should I say, the United States  
18 in this case. Correct?

19 THE DEFENDANT: Yes, Your Honor.

11:00 20 THE COURT: And I believe this goes back to  
21 September of 2016, just under -- thereabouts, 18 months,  
22 since the plea was entered at that time.

23 September 15, 2016, you entered a plea of  
24 "guilty" to the charge of wire fraud. And at that time  
11:01 25 there was a -- I believe, may have been a stipulation as it

1 relates to -- maybe it wasn't, but let me just make sure.

2 Mr. Lewis, was there a stipulation as relates  
3 to the forfeiture loss that was incurred by the Defendant or  
4 that the government was agreeing to as a result of  
11:01 5 the Defendant's conduct?

6 MR. LEWIS: Yes, Your Honor. That is correct.

7 THE COURT: And do you recall what that stipulation  
8 was or is?

9 MR. LEWIS: I can read it from the plea agreement,  
11:01 10 Your Honor.

11 THE COURT: All right.

12 MR. LEWIS: Referring to Page 13 of the plea  
13 agreement, Paragraph 23, Your Honor, the Defendant and the  
14 United States stipulated and agreed that the factual basis  
11:02 15 for his guilty plea supports a forfeiture of at least  
16 \$3,616,563.45 against the Defendant and in favor of the  
17 United States.

18 THE COURT: All right. And that forfeiture  
19 stipulation is now the subject of some -- not necessarily  
11:03 20 dispute but some proffer or statements that I gather the  
21 government, as well as the defense, chooses or has chosen to  
22 provide to the Court.

23 So, let me ask whether or not you all agree on  
24 what that adjustment ought to be. Do you all agree with  
11:03 25 each other on that?

1 MR. LEWIS: I don't think we do. I think we agree  
2 in part but not as to the final number.

3 THE COURT: All right. So, we'll hear what your  
4 differences are.

11:03 5 And for the benefit of the record Mr. Factor,  
6 I believe his name is -- Is that correct?

7 MR. LEWIS: Yes, Your Honor.

8 THE COURT: Is he here in the courtroom?

9 MR. LEWIS: He is, Your Honor.

11:03 10 THE COURT: Mr. Factor has provided to probation  
11 and maybe the government what we will refer to as a "victim  
12 impact statement" indicating, I gather, what he would  
13 describe as the factual basis and scenario surrounding the  
14 fraudulent scheme or schemes, as well as what he determines  
11:04 15 in his own search and determinations to be the appropriate  
16 forfeiture. And I think he goes beyond that, however, and  
17 determines that there is another number that the Court, I  
18 gather, should think about, and that is the project  
19 opportunity losses, which I cannot.

11:04 20 MR. FAZEL: Correct.

21 THE COURT: But the point is that that's what, I  
22 gather, the civil lawsuit is about.

23 MR. LEWIS: Yes, Your Honor.

24 THE COURT: And that remains pending at this time.

11:04 25 MR. LEWIS: Yes, Your Honor. And, as the Court has

1 observed, Mr. Factor is the owner and CEO of the victim  
2 corporation Airis International, and he is here at the  
3 Court's discretion and willing to speak and available to  
4 speak to talk about the impact on the corporation. The  
11:05 5 Court, of course, has the --

6 THE COURT: I am going to put you on the spot and  
7 ask you and then we'll come back to you as well on this.

8 MR. FAZEL: Yes, Your Honor.

9 THE COURT: But I am going to put you on the spot  
11:05 10 and ask you whether or not probation's determination of the  
11 loss, actual dollar loss, is consistent or close or  
12 inconsistent, substantially, with what Mr. -- what the Airis  
13 company would claim is its actual loss. Do you know? I  
14 don't know if you know that; so, I am putting you on the  
11:05 15 spot.

16 MR. LEWIS: Probation's calculation is correct,  
17 Your Honor.

18 THE COURT: Okay. So, is that a number -- except  
19 for the fact that there is a claim of damages which exceeds  
11:05 20 what actual losses might have occurred and other contractual  
21 obligations that the Plaintiff Airis might make or  
22 Mr. Factor might make in his lawsuit -- beyond that, is  
23 Mr. Factor and Airis disputing that number?

24 MR. LEWIS: No, Your Honor.

11:06 25 THE COURT: Okay. So, that would mean -- it means,

1 in part, that I can now turn to you, Mr. Fazel, and ask you.

2 As relates to your claim of credits --

3 MR. FAZEL: Yes, Your Honor.

4 THE COURT: -- there are at least three areas, I  
11:06 5 believe, of credits that the government, let's say, concedes  
6 with or -- I don't want to say "agree", but they concede  
7 that you're entitled to those credits. And I believe  
8 probation has also acknowledged that and has applied those  
9 credits. Are those credits that are applied in order?

10 MR. FAZEL: If it pleases the Court. There are two  
11 that the probation has conceded to, one that the government  
12 has conceded to but probation has not, and that is on Page 5  
13 of my objections for 31,231 --

14 THE COURT: Hold on just one second. Let me get  
11:06 15 there because I didn't have your objections handy. I was  
16 kind of going through my thoughts.

17 What page are you on as referring to your  
18 objections?

19 MR. FAZEL: Page 5 of the objections, Your Honor.

11:07 20 THE COURT: Page 5. You're looking at item what?

21 MR. FAZEL: "D".

22 THE COURT: I'm sorry?

23 MR. FAZEL: "D" as in "dog".

24 THE COURT: "D".

11:07 25 MR. FAZEL: Yes, sir.



1 THE COURT: That's the 31,231.16 number?

2 MR. FAZEL: Correct.

3 THE COURT: That's a number that probation does not  
4 concede?

11:07 5 MR. FAZEL: I believe that's correct, Your Honor.

6 THE COURT: It is a number that the government does  
7 concede?

8 MR. FAZEL: Correct.

9 THE COURT: And I want to know the difference  
11:07 10 between the government and probation there.

11 Beyond that, there are two other, I believe --  
12 two or three other credits that you believe should be made  
13 that are not made. So, would you tell me what those others  
14 are by letter, if you could.

11:07 15 MR. FAZEL: Yes, Your Honor. If it pleases the  
16 Court, Page 4 of the objections addresses the first one.

17 THE COURT: That would be "A"?

18 MR. FAZEL: That would be "A". Correct, Your  
19 Honor.

11:07 20 THE COURT: That's not conceded by the government  
21 or probation?

22 MR. FAZEL: Correct. That would be for work that  
23 is undertaken and monies that are owed Westtree, which is  
24 the company that Mr. Nathan West owed.

11:08 25 During the life -- I guess just to back up a

1 little bit, at some point in time -- and these are in my  
2 objections, these facts -- Westtree was created and was part  
3 and parcel of working with, if you will, the Airis  
4 Corporation; and Westtree provided services for the Airis  
11:08 5 Corporation, including paying checks, paying --

6 THE COURT: So, this was time expended, and whether  
7 it's Mr. West's time or time by the employees, that he would  
8 claim should be reimbursed or, at least, applied to his  
9 account?

11:08 10 MR. FAZEL: Correct.

11 THE COURT: Let's go to the next one, then.

12 MR. FAZEL: And the next one would be -- that one  
13 is the 26,197, "B" as in "boy" in objections. That's  
14 Page 4.

11:08 15 That is -- And the Court is well aware of  
16 this. When there is companies that are offshooting another  
17 company or a company that sells or purchases another  
18 company --

19 THE COURT: Right.

11:09 20 MR. FAZEL: -- working closely together, especially  
21 in this situation where Westtree was basically an entity  
22 that existed in Atlanta and was part and parcel of Airis  
23 before it separated, there is equipment and so forth that  
24 shows, accounting-wise, as being provided to Westtree.

11:09 25 However, even though, in accounting nomenclature, the ledger

1 shows monies owed to Airis because equipment was given to  
2 Westtree and, therefore, Westtree should pay Airis back that  
3 money, this was just an accounting-type undertaking.

4 I think the understanding is that nobody would  
11:09 5 pay \$26,000 for older equipment, especially one that has  
6 been -- As you know, in accounting --

7 THE COURT: It depends on which side of the ledger  
8 you're working.

9 MR. FAZEL: That's absolutely correct.

11:09 10 THE COURT: You could put that number down if  
11 you're going to write it off again.

12 MR. FAZEL: I guess the point is the equipment in  
13 that situation, as you were mentioning, it would have been  
14 depreciated by that time --

11:10 15 THE COURT: But that depreciation is not the  
16 Defendant's depreciation. That depreciation belonged to  
17 Airis.

18 MR. FAZEL: Correct.

19 THE COURT: And now that, theoretically, these same  
11:10 20 assets are in the possession of Westtree, they now are the  
21 assets of Westtree, and Westtree can put them on the book  
22 and so did your client put them on the books as he chose to.

23 MR. FAZEL: Correct.

24 THE COURT: He's the accountant --

11:10 25 MR. FAZEL: Correct.

1 THE COURT: -- on both sides of the ledger.

2 MR. FAZEL: Yes, sir.

3 THE COURT: So, we're talking about 26,000 dollars'  
4 worth -- You're talking about equipment and supplies or just  
11:10 5 like computers and things?

6 MR. FAZEL: Computers and phones and desks and  
7 such.

8 THE COURT: Okay. I got that. What else?

9 MR. FAZEL: Number "C" has been agreed to by both  
11:10 10 the government and probation.

11 THE COURT: We talked about "D".

12 MR. FAZEL: We talked about "D".

13 Number "E" -- excuse me -- letter "E" has been  
14 agreed to by the government and probation.

11:11 15 THE COURT: All right.

16 MR. FAZEL: "F" is -- there is something called the  
17 Westtree calculation report or "WIC" that was part of the  
18 discovery process in this case.

19 The numbers that were used in order to come up  
11:11 20 with the 3.6-million-dollar loss included looking at that  
21 report and general ledgers of the companies to determine how  
22 much money was transferred back and forth. There's a lot of  
23 transfers, Your Honor, going back and forth between the  
24 companies. A lot. And, so, it was quite a bit of an effort  
11:11 25 to figure out what transfer went where.

1 THE COURT: We're talking about monetary transfers?

2 MR. FAZEL: Correct.

3 THE COURT: Cash?

4 MR. FAZEL: Monies --

11:11 5 THE COURT: Or instruments of cash.

6 MR. FAZEL: Correct, being moved back and forth  
7 for many purposes -- paying billings and so forth.

8 In those reports it indicates that there is an  
9 amount of \$1.1 million in one of the ledgers. The other one  
11:12 10 shows 1.095.

11 And, so, the 25,787.42 -- it shows the Court  
12 that there is a discrepancy between what one document  
13 indicates ought to be -- which is WIC, which is the West  
14 Interest Calculation Report used by the government -- and  
11:12 15 the general ledger of Airis.

16 THE COURT: All right. And which of these is  
17 Westtree's?

18 MR. FAZEL: Neither. WIC was created -- I believe  
19 was used by the government and created by one of the  
11:12 20 employees of Westtree in consultation and cooperation with  
21 the government. The Airis ledger is created by the  
22 accounting firm.

23 THE COURT: Which is Airis' number?

24 MR. FAZEL: Airis' number is 1,095,097.09.

11:12 25 THE COURT: Which means that that's the lesser

1 number, which means -- Airis' argument is that you're not  
2 entitled to the \$25,700?

3 MR. FAZEL: The other way around, Your Honor. The  
4 1.1 million, which is WIC's higher amount. So, we're  
11:13 5 actually getting a credit, looking at Airis' ledger.

6 THE COURT: I'm sorry. Let's do that again.

7 MR. FAZEL: Yes, sir.

8 THE COURT: Which of these is Airis' ledger?

9 MR. FAZEL: The Airis ledger was 1,095,000.

11:13 10 THE COURT: Okay. 1,095,000, which makes this on  
11 its ledger for less value --

12 MR. FAZEL: -- than what the government shows.

13 THE COURT: -- than what the government shows.

14 And Airis would argue -- this is what I was  
11:13 15 trying to say -- Airis would argue that you're not entitled  
16 to the 25,700?

17 MR. FAZEL: No. Because it's Airis' ledger, I  
18 don't see how they could argue that.

19 The government's accounting indicates that --

11:13 20 THE COURT: Well, they're not going to measure  
21 against the government. The government is playing a  
22 different role here.

23 You're seeking the difference between  
24 1.1 million which the government claims is there and 1.095  
11:13 25 which Airis claims is there.

1 MR. FAZEL: Correct.

2 THE COURT: And we have to admit that Airis would  
3 not be -- if Airis were to give you this \$25,000 it would  
4 mean their ledger number is lower than it ought to be.

11:14 5 Right?

6 MR. FAZEL: Correct.

7 THE COURT: Am I reading that correctly?

8 MR. FAZEL: In other words, we would have to say --  
9 In other words, if the Court does not agree with this  
11:14 10 correction, then what we're saying is that Airis' ledger is  
11 incorrect and, then, that the Westtree interest calculation  
12 is correct.

13 THE COURT: Well, I'm not saying either is correct.

14 MR. FAZEL: I know. I just want to make sure that  
11:14 15 the Court understands, if we assume that Airis' ledger is  
16 correct, then we're owed a 25-thousand-dollar credit.

17 THE COURT: Does the government understand that  
18 argument?

19 MR. LEWIS: Yes, Your Honor, I understand the  
11:14 20 argument, but the government disagrees with the argument.

21 THE COURT: All right. We'll come back to that,  
22 then.

23 MR. FAZEL: Then on -- That was "F", Your Honor,  
24 that we discussed.

11:14 25 THE COURT: Yeah.

1 MR. FAZEL: "G" is -- there were three payments  
2 made by Westtree on behalf of Airis to companies that Airis  
3 owed money. These payments added up to \$32,717.38.

4 THE COURT: What does Airis say? Mr. West is  
11:15 5 keeping the books on both sides of this. So, is he saying,  
6 first, that Westtree has made the payments and, secondly,  
7 that the money is owed to Airis or is he saying it's owed to  
8 Westtree?

9 MR. FAZEL: He's saying that the credit was never  
11:15 10 provided to --

11 THE COURT: But how could it not be if he's keeping  
12 the books?

13 MR. FAZEL: Because I don't think Mr. West was  
14 keeping all the books. Mr. West was certainly keeping the  
11:15 15 Westtree books. Mr. West was certainly keeping certain  
16 ledgers, but the Airis ledger was being kept by an  
17 independent, I would say, accounting firm that I have given  
18 the name to the Court. It's Harshman and Phillips.

19 THE COURT: Okay. So, he's claiming a 32,700-plus  
11:16 20 credit there for payments made that Airis does or does not  
21 recognize?

22 MR. FAZEL: Your Honor, I don't know the answer to  
23 that because there is nothing in the ledgers that would  
24 suggest that Airis does or does not recognize it. We just  
11:16 25 know -- by looking at the ledgers and looking at the bank



1 accounts, we know that these payments were made on behalf of  
2 Airis.

3 THE COURT: Okay. Where is the government on this?  
4 Agree or disagree?

11:16 5 MR. LEWIS: I'm sorry, Your Honor?

6 THE COURT: That 32,700, that's part of your  
7 disagreement?

8 MR. LEWIS: Yeah. We disagree with that, Your  
9 Honor.

11:16 10 THE COURT: We'll come back to that.

11 "H" is the last of the agreed?

12 MR. FAZEL: That is the last of the objections.

13 THE COURT: Oh. Objections. Well, what three did  
14 they agree to?

11:16 15 MR. FAZEL: I'm sorry. The three that we agreed to  
16 were "C" on Page 4 --

17 THE COURT: All right.

18 MR. FAZEL: -- "D" on Page 5 and "E" on Page 5.

19 THE COURT: And probation disagrees with "D".

11:17 20 MR. FAZEL: The probation department disagrees with  
21 "D". Correct.

22 THE COURT: All right. Let me now return, then,  
23 to --

24 MR. FAZEL: "H", which is the last one.

11:17 25 THE COURT: -- yeah, to "H".

1 MR. FAZEL: That is simply, Your Honor -- there's  
2 \$23,625 of money that is owed to Westtree for work done on  
3 behalf of Airis, which was their standard keeping of the  
4 books and doing what --

11:17 5 THE COURT: How is this different, then, from "A"?

6 MR. FAZEL: Different time period.

7 THE COURT: But the same --

8 MR. FAZEL: -- type of argument.

9 THE COURT: The same argument. Same basis.

11:17 10 MR. FAZEL: Yes, Your Honor.

11 THE COURT: I get it.

12 And the government disagrees there?

13 MR. LEWIS: Yes, Your Honor.

14 THE COURT: Let me move, then, to the government's  
11:17 15 response, then, to "A" and "H". These would be times --  
16 argument is being made, I think, that these are credits that  
17 should go for work done and time expended.

18 Any response?

19 MR. LEWIS: Yes, Your Honor.

11:18 20 If I could, in responding, I just want to  
21 explain from the beginning that, as the Court is aware,  
22 Mr. West worked for Westtree first as -- I'm sorry -- worked  
23 for Airis first as their internal accountant and bookkeeper.  
24 Then he formed Westtree and continued providing accounting  
11:18 25 and bookkeeping services to Airis. This is a tangled web of

1 deception and confusion, which is why the numbers are not  
2 clear to the Court today.

3               Mr. West, as the Court certainly understands,  
4 was preparing the accounting records and books for Airis.  
11:18 5 In fact, he prepared more than one set of books. He  
6 prepared false ledgers, false wire statements, false bank  
7 records, as part of his scheme to confuse and deceive Airis  
8 as well as the outside accounting firm Harshman and Phillips  
9 that's been referred to today. Mr. West provided some of  
11:19 10 the raw data to Harshman and Phillips that they relied on in  
11 preparing statements for Airis.

12               Because of Mr. West's intentional efforts to  
13 deceive not only Airis and, also, Harshman Phillips, but he  
14 also deceived -- and this is important, we believe, Your  
11:19 15 Honor -- he deceived Ann Dykes. And Ann Dykes worked for  
16 Mr. West. She did the bookkeeping services for Mr. West.  
17 He was her supervisor. He was the owner of the company. He  
18 oversaw what she did. And she prepared the bookkeeping  
19 records which the government has relied on, after the FBI  
11:19 20 interviewed her, and they reviewed the records with her.

21               So, some of the statements that have been made  
22 today by defense counsel about statements that are Airis'  
23 statements -- it's not true. These are statements that were  
24 prepared by Westtree, by Ms. Dykes. She prepared these  
11:19 25 statements. In accordance with the instructions she was

1 given by Mr. West, she believed that these money transfers  
2 from Airis into the bank accounts of Westtree and other  
3 corporations --

4 THE COURT: You passed up what I was trying to  
11:20 5 cover.

6 But I believe the transfers would have been  
7 "F". Right?

8 MR. FAZEL: The transfers would be "G", actually,  
9 Your Honor.

11:20 10 THE COURT: I'm sorry?

11 MR. FAZEL: "G". Those would be the payments that  
12 were made on behalf of --

13 THE COURT: Okay. Those transfers.

14 MR. FAZEL: Yes.

11:20 15 THE COURT: So, let me go back, Mr. Lewis.

16 I think what I am asking is: Are you  
17 saying -- Maybe I should turn it around this way. Are you  
18 saying that there is no way to definitively determine  
19 whether the "A" and "H", which I would define as work done  
11:20 20 by employees and/or time expended -- 'You owe me because I  
21 worked 20 hours,' et cetera, that kind of argument -- Are  
22 you arguing or stating that there is no way to verify or  
23 that you feel comfortable verifying or the records would not  
24 necessarily verify that this work was actually done?

11:21 25 MR. LEWIS: In part, Your Honor. I am saying that

1 Mr. West, the Defendant in this case, has not met his burden  
2 of supporting those objections with reasonable, adequate and  
3 necessary proof to establish that those objections are  
4 valid.

11:21 5 What he could have done, which I have seen in  
6 other cases, is to hire an outside accountant, an  
7 independent accountant or CPA or accounting firm, to review  
8 all of these records and provide an independent report to  
9 the Court. Instead, what Mr. West did is he did his own  
11:21 10 analysis, and it's because of his misconduct in doing  
11 accounting procedures and analyses that brings us here  
12 today.

13 So, the Court shouldn't, respectfully, rely  
14 upon someone who is not credible in the sense that, but for  
11:22 15 the fact that he committed this fraud scheme for a period of  
16 seven years -- and it was a complex fraud scheme -- I keep  
17 repeating that -- but for the fact that he committed the  
18 scheme, we wouldn't be here today. And he has not met his  
19 burden of proof by hiring someone or asking someone, other  
11:22 20 than himself, who is qualified to provide an expert opinion  
21 or reasonable opinion to the Court to rely upon.

22 And the other point I would like to make, Your  
23 Honor, is Westtree provided accounting services and  
24 bookkeeping services to other companies, other individuals.  
11:22 25 Some of those individuals have filed criminal complaints in

1 the state of Georgia. So, it wasn't just for Airis.

2 And, certainly, he did provide some services  
3 to Airis, but the quality of those services -- Airis didn't  
4 get what they bargained for, what they paid for. Instead,  
11:22 5 they were the victim of a fraud where they lost almost  
6 \$4 million.

7 So, it is hypocritical for Mr. West to say,  
8 'Look, Your Honor. I am going to accept responsibility and  
9 take the necessary appropriate punishment from the Court,  
11:23 10 but I want to get paid for the work that I am now being  
11 sentenced for.' It doesn't make sense in terms of equity  
12 and fairness. It's not reasonable for Mr. West to make the  
13 request without meeting his burden of proof that he's  
14 entitled or anyone is entitled.

11:23 15 And he hasn't clearly demonstrated that  
16 Westtree has not already been paid. That's the allegation,  
17 but he hasn't proven that allegation. He doesn't have  
18 anything more than an objection.

19 THE COURT: So, I gather your argument along those  
11:23 20 lines would also apply to what are listed here as Items F  
21 and G, the \$25,700 that you said you disagree with, and the  
22 \$32,700, which are the allegations -- payments to third  
23 parties.

24 MR. LEWIS: That's correct, Your Honor.

11:24 25 And with respect to Allegation "F" counsel for

1 Mr. West referred to a report that was created for Airis,  
2 the Westtree Interest Calculation. That was not prepared by  
3 Airis or for Airis. It was prepared by Ann Dykes who worked  
4 for Mr. West. She prepared that number.

11:24 5 So, we are relying upon that number because we  
6 have looked at the records. We have interviewed Ms. Dykes.  
7 She said that, based upon her years working with Mr. West,  
8 that number is accurate; and, therefore, we're relying on  
9 it.

11:24 10 And Mr. West --

11 THE COURT: I think you are referring to Item D,  
12 then, aren't you? Item D is the one you agreed with that  
13 probation disagreed with. That's the 31,000.

14 MR. LEWIS: Which page, Your Honor? I was looking  
11:24 15 at Page 5.

16 THE COURT: I'm not sure. Item D is -- Are you  
17 looking at Mr. Fazel's outline?

18 MR. LEWIS: I am looking at his objections, Your  
19 Honor.

11:24 20 THE COURT: Okay. I am looking at Page 5, then.  
21 On Page 5 I marked Item D, \$31,231, as being, as Mr. Fazel  
22 says, you agree with --

23 MR. LEWIS: That's correct.

24 THE COURT: -- that probation disagreed with.

11:25 25 MR. LEWIS: I believe probation agreed with that,

1 Your Honor.

2 THE COURT: Do you --

3 MR. LEWIS: Page 7 --

4 THE COURT: I'm not sure it makes him a lot of  
11:25 5 difference, but it's --

6 PROBATION OFFICER: No, Your Honor. We adopted the  
7 government's response, but that amount does not impact the  
8 guideline calculations.

9 THE COURT: I get it. I get it.

10 But adopting -- she's saying that you might  
11 get the credit, but you don't get any adjustment --

12 MR. LEWIS: That's correct.

13 THE COURT: -- in sentence to be imposed.

14 MR. LEWIS: I wanted to make it clear that the  
11:25 15 government believes in being fair; and, therefore, based  
16 upon our review or responses to the objections we are --

17 THE COURT: Let me ask it this way.

18 Does that number show up and is it reflected  
19 in the probation's or your final calculation as to what  
11:26 20 the -- Let me just take a look. I believe that -- Let's  
21 make sure we know what we're talking about.

22 I believe the government's -- I'm sorry -- I  
23 believe probation's final number is \$3,561,166.11.

24 MR. LEWIS: That's correct, Your Honor.

11:26 25 THE COURT: And you would say that that 31,000



1 should be and is reflected in that calculation?

2 MR. LEWIS: Yes, Your Honor.

3 THE COURT: All right. I see a nod from probation.

4 PROBATION OFFICER: Yes, Your Honor. That is my  
11:26 5 understanding.

6 THE COURT: You're saying that's the understanding.

7 So, let's move away from that because I think  
8 you were confusing me when I asked you about "G" because "G"  
9 was a three-part payment argued by Mr. Fazel as being  
11:26 10 payments made by Westtree, I gather, on behalf of Airis  
11 totaling 32,700. And probation, I believe, as well as  
12 yourself, say, 'We disagree.'

13 MR. LEWIS: That's correct.

14 THE COURT: And is the basis -- What my question  
11:27 15 was: Is the basis of your disagreement like or similar to  
16 the argument that you have made for not giving credit for  
17 work and time expended because the books aren't reliable?

18 MR. LEWIS: And I apologize for being confusing and  
19 responding, Your Honor. The answer is: This is an  
11:27 20 additional and different argument.

21 THE COURT: Okay. Go ahead.

22 MR. LEWIS: This argument with respect to  
23 Objection G on Page 5 is there is no proof to whom these  
24 payments were made by Dixon West Properties, which was an  
11:27 25 entity owned by Westtree. Mr. West hasn't met his burden of

1 establishing to whom these payments were made.

2 THE COURT: All right. And that argument, then,  
3 Mr. Fazel -- or response to that is what?

4 MR. FAZEL: If it please the Court. If I can --  
11:27 5 May I respond to the issue --

6 THE COURT: No. I want to go to "G" right now --

7 MR. FAZEL: Yes, Your Honor.

8 THE COURT: -- while it's hot on my mind.

9 MR. FAZEL: The argument to that is that, if the  
11:28 10 Court was to look at the bank records, you will see the  
11 payments being executed to the respective business entities.  
12 Those are attached as exhibits to my objections as  
13 Exhibit 6. I don't know how else to prove that these were  
14 on behalf of Airis other than to show the bank records  
11:28 15 and/or the general ledgers that show that.

16 So, I am going to rest on that issue.

17 THE COURT: Well, what dates are we looking at?

18 MR. FAZEL: If you go to Exhibit 6, Your Honor --

19 THE COURT: That three-page document.

11:28 20 MR. FAZEL: -- yes, Your Honor -- you will see that  
21 there is -- and here's when -- This is the part that the  
22 government will say, 'Well, how do we know what these are?'  
23 And I can understand that, but you can look at Page 6 --  
24 excuse me -- Exhibit 6. You will see wire transfers for  
11:28 25 12-5, 12-5 --

1 THE COURT: I'm sorry. Are you giving me dates?

2 MR. FAZEL: I'm sorry. Yes, Your Honor, for 12-5,  
3 December 2005.

4 THE COURT: Okay. In the amount of?

11:29 5 MR. FAZEL: \$5,000.

6 THE COURT: Okay. I see that.

7 MR. FAZEL: Right below it, December 2005, for  
8 1,850.

9 THE COURT: Right. I see that.

11:29 10 MR. FAZEL: And then you'll have -- on the next --  
11 following page, Your Honor, you have again wire transfers.

12 THE COURT: So, would it be reflected in what we  
13 call the "wire transfers"? Is that where you were  
14 talking --

11:29 15 MR. FAZEL: Correct. An ACH payment.

16 THE COURT: -- in ACH payments?

17 MR. FAZEL: Yes, sir.

18 THE COURT: All right. And what you're saying is  
19 you concede that the government is going to argue, well, how  
11:29 20 do we know where that money went and whether or not it was  
21 actually owed or whether there's any invoice --

22 MR. FAZEL: Correct. And then the response back  
23 from me would be, well, you'd have to look at the Airis  
24 general ledger that would reflect that. And then they would  
11:29 25 say, well, the Airis general ledger was somehow manipulated

1 by Mr. --

2 THE COURT: I get it.

3 MR. FAZEL: And we're back to the circular  
4 argument.

11:29 5 THE COURT: All right. Finally, Mr. Lewis, tell me  
6 about "F" which is the 25,787. That's on Page 5. And  
7 Mr. Fazel is arguing that there is a distinction or  
8 difference between the certain reports. We got into that  
9 initially, the 1.1 million versus 1.095.

11:30 10 MR. LEWIS: Yes, Your Honor. With respect to  
11 Item F or Objection F on Page 5, Mr. West, through his  
12 counsel, makes the objection that the Westtree calculation  
13 report reflecting the 1.12 million amount shouldn't be  
14 relied upon or isn't reliable because it was created by the  
11:30 15 FBI. That's what's in writing in the objections.

16 That is not accurate. It was not created by  
17 the FBI. It was created by Ann Dykes who worked for  
18 Mr. West at the instruction of Mr. West. She kept a running  
19 total of the monies that he was taking or stealing from  
11:31 20 Airis.

21 Therefore, it is the government's position  
22 that that number, the 1.12 million number, is accurate and  
23 reliable because it was prepared by the employee of  
24 Mr. West, Ann Dykes, who kept track --

11:31 25 THE COURT: As opposed to the FBI?

1 MR. LEWIS: Correct. And that there is no  
2 support -- Mr. West has not met his burden of proving that  
3 the 1.12-million-dollar number is not reliable and not  
4 accurate for the reasons I just stated.

11:31 5 THE COURT: Well, where does he get the 1.095  
6 number from?

7 MR. LEWIS: I don't know.

8 MR. FAZEL: If I may address that issue, which is  
9 "F".

11:31 10 So, the government takes the position that --  
11 and it was -- You're right. I misspoke or mistyped. It  
12 wasn't created by the FBI, but it was certainly relied on by  
13 the FBI.

14 THE COURT: Yeah. That's what Mr. Lewis is saying.

11:31 15 MR. FAZEL: So, what we're saying is, if you look  
16 at the Westtree Interest Calculation Report, it indicates  
17 the balance amount of \$1.1 million as of December 2012. If  
18 you look at the general ledger that's being held by Airis  
19 that this man right here has no access to, that shows 1.095.

11:32 20 THE COURT: Uh-huh.

21 MR. FAZEL: So, if you -- You would have to then  
22 say that he had somehow been able to access the general  
23 ledger of Airis to be able to input something.

24 And, as the Court knows, the general ledger  
11:32 25 has a debit and a credit. You just can't manipulate it like

1 that. There's got to be some sort of -- It just can't be  
2 done that way, especially if an accounting firm is looking  
3 over your shoulder.

4 So, my point to the Court is that this is a  
11:32 5 difference of \$25,000 that there is no explanation for other  
6 than somebody has a mathematical error here. That's "F".

7 As far as "A" is concerned, that's even more  
8 pointed, if it pleases the Court, because the Airis general  
9 ledger is what we're relying on in order to, again,  
11:33 10 demonstrate that \$69,000 should be credited to Mr. West,  
11 because the difference between the two -- Again, what we're  
12 relying on is the more conservative number of \$107,000, and  
13 that's in our Westtree ledger. If you look at the Airis  
14 ledger it's \$117,000; it would be more.

11:33 15 So, we believe that \$69,182 is also owed to  
16 Mr. West.

17 THE COURT: All right. I get it.

18 MR. FAZEL: That's "A".

19 THE COURT: All right. Is there anything that any  
11:33 20 person -- I got the information -- I got the notice that  
21 there was something that someone -- one of your witnesses or  
22 a witness could say that would, I guess, lend clarity to  
23 some of this. Is this what that person would be discussing?

24 MR. FAZEL: No, Your Honor. That witness would be  
11:34 25 talking about restitution and how we plan on making

1 restitution to the folks at Airis.

2 THE COURT: How can that person make comments about  
3 restitution or a person that -- someone else?

4 MR. FAZEL: I can proffer exactly if the Court  
11:34 5 wishes me to do that.

6 THE COURT: Yeah. Let me hear what it's going to  
7 be.

8 MR. FAZEL: Mr. "Ret" Gunn.

9 THE COURT: Spell that.

11:34 10 MR. FAZEL: Sure. I'm sorry. I apologize. And  
11 let me give you his full name for the record.

12 His full name is spelled E-r-r-e-t-t, last  
13 name G-u-n-n, and he goes by "Ret", R-e-t, Gunn.

14 Mr. Gunn has been working with Mr. West since  
11:34 15 this whole business has occurred and since Mr. West was  
16 arrested, indicted, working together in order to help  
17 Mr. Gunn's business. Mr. Gunn is well aware of the  
18 circumstances of Mr. West. He's been in the courtroom. I  
19 have met with him and is aware of what's going on both here  
11:35 20 and the cases in Georgia. He, nevertheless, wants to  
21 continue to work with Mr. West because Mr. West has helped  
22 him tremendously in his business, in ability to obtain  
23 business, in ability to help him with bids and so forth.  
24 Mr. Gunn is a contractor.

11:35 25 He will testify to the Court that Mr. Gunn

1 owes Mr. West \$150,000 -- a little bit more than that,  
2 actually -- that Mr. Gunn expects to have that amount of  
3 money in about three weeks. I thought it important to have  
4 that under oath because Mr. Gunn has been attempting to make  
11:35 5 payments, and we actually filed a joint motion with the  
6 government to create an account to make those payments ahead  
7 of sentencing. But because of business issues that they've  
8 had and cash flow issues that they have in the construction  
9 business, they haven't been able to do that thus far. But  
11:35 10 they feel very, very confident that that can occur very  
11 soon.

12 He will also address upcoming monies that they  
13 expect to earn as part of their business venture that  
14 Mr. West has helped with and will explain how much of that  
11:36 15 money is Mr. West's money and that we would like to put into  
16 the registry of the court to pay back Airis as part of the  
17 restitution order.

18 THE COURT: Well, I can take all that -- statements  
19 and comments and concerns from you. I don't think I should  
11:36 20 be taking it necessarily under oath.

21 I think if there is an agreement -- certainly,  
22 the parties can enter any agreement they want and, under  
23 contractual terms, obligate themselves to each other in that  
24 way. But to take a statement to that effect would have no  
11:36 25 impact upon the issue of restitution.



1 And I take it, as a good will gesture, that  
2 Mr. West has friends or, at least, a friend who is willing  
3 to fulfill his obligations to Mr. West and, perhaps, even  
4 some future consideration for some other things that may or  
11:37 5 may not have been done or that may be done in the future,  
6 whatever that might be. I hear that.

7 MR. FAZEL: But that's what Mr. Gunn was going to  
8 testify to very briefly. It's more of a friend -- It's more  
9 of a working relationship, Your Honor.

11:37 10 THE COURT: Yeah. I, generally, will not take  
11 testimony from witnesses unless they're victims of the,  
12 quote, crime itself.

13 And, so, I am going to give two or three  
14 minutes to Mr. Factor, I believe, for him, if he chooses, to  
11:37 15 make a statement. I don't think that his report to the  
16 federal government necessarily should be made a part of the  
17 record, but certainly if he wants to speak to...

18 He can stand here to the right of Mr. Lewis.

19 Mr. Lewis, if you would put that microphone a  
11:37 20 little bit over so that he can speak into that.

21 MR. LEWIS: Yes, Your Honor.

22 THE COURT: Certainly, he can speak to that if he  
23 chooses to at this time.

24 Beyond that, counsel, I don't take witnesses  
11:38 25 for purposes of character and other things. Those are

1 letters that I receive.

2 What is your name, sir?

3 MR. FACTOR: My name is Ronald Factor.

4 THE COURT: All right. I'm not putting you under  
11:38 5 oath. You're making a statement. So, go ahead and proceed.

6 MR. FACTOR: Thank you, Your Honor.

7 It has been five years, three months to this  
8 very day since we discovered Nathan West's crime. It has  
9 been a very difficult period of time trying to recover from  
11:38 10 that discovery and to recover from the harm that he has  
11 caused our business and our employees.

12 Since the time of discovery, my wife and I  
13 have liquidated every asset that we own to try to keep the  
14 company in business and keep the employees employed. That  
11:38 15 has failed over that period of time.

16 Since the investigation discovered the  
17 beginning of his theft and of his crime almost twelve years  
18 ago, he inflicted a very slow bleed into the company that  
19 has festered into a fatal blow. We are now down to one  
11:39 20 employee. We had 24. He affected the lives of those 24  
21 employees, many of whom worked without pay for a long period  
22 of time because of their devotion, and one of whom, who is  
23 here with me, my son, who had worked with the company for  
24 18 years, even had to sell his home and his family has  
11:39 25 suffered where they are homeless today. They pulled the

1 children out of private schools simply because of their  
2 devotion to the company and, simply, because of this  
3 person's crime.

4 And I say to you, Judge, in all respect, that  
11:40 5 after being in business for 53 years I have never gone  
6 through anything like this in my life. Now, in my end  
7 years, I don't know if I can recover. I will be 72 years  
8 old in a few months. The task is daunting. By the grace of  
9 God I do not give up. But because of the actions of this  
11:40 10 person he has led our company to a road of commercial and  
11 professional perdition, and I hope we recover and I hope  
12 this man pays.

13 Thank you, Your Honor.

14 THE COURT: Thank you, sir. You may have a seat.  
11:41 15 Thank you.

16 All right. Let me go ahead now and ask you,  
17 Mr. Fazel, whether or not -- Beyond these objections that we  
18 have addressed to this point, I don't know I saw any other  
19 factual errors or other objections that have been raised.

11:41 20 MR. FAZEL: There were two other objections, if it  
21 pleases the Court. Those would be found on Page 3 of the  
22 objections that were filed with the Court, the first  
23 being -- objecting to the sophisticated means and the second  
24 being acceptance.

11:41 25 THE COURT: Yeah, I do recall. I apologize.

1 MR. FAZEL: If I could work backwards. As to his  
2 acceptance --

3 THE COURT: I have read these. I am prepared -- I  
4 wanted to discuss the financial side of things because I  
11:41 5 wanted to make sure there was a record of the discussion and  
6 the exchange and, as well, I wanted to make sure that I  
7 understood what you were arguing and asserting and what  
8 Mr. Lewis' position is because I recognize that there were  
9 some areas that there was no disagreement.

11:42 10 But, as far as the sophisticated method, I  
11 believe Mr. Lewis has responded to that in his comments.

12 And then there are certain paragraphs, I  
13 believe, or portions of the report -- In Paragraph 28, I  
14 believe, you argue that should not be stated or should --  
11:42 15 they have an implication that is beyond what the implication  
16 should be, I gather.

17 None of these statements, however, in  
18 Paragraph 28 would impact the sentence to be imposed. That  
19 is, they do not -- I am saying Paragraph 28. Paragraph  
11:42 20 28 -- I'm not sure if that's the right number.

21 MR. FAZEL: It is, Your Honor. 28 is the --

22 THE COURT: Let me just... 28 is the acceptance of  
23 responsibility portion.

24 MR. FAZEL: Correct.

11:43 25 THE COURT: I will let him address that, but there

1 is no objection to be made. And to the extent that these  
2 represent objections, then the Court is going to overrule  
3 those, Paragraphs 23 and 28, your objections to the report  
4 in that respect.

11:43 5 Let me turn now to the financial parts of this  
6 because I think that this is critical to the Court's  
7 consideration.

8 If Mr. West is in a position to supply and did  
9 supply financial data to Airis -- whether it was placed on  
11:43 10 the books by employees of Airis or whether or not he had  
11 control of it does not mean that he didn't have authority to  
12 mislead them by the way that he presented that material.

13 And because of that possibility -- you know,  
14 you argue that, well, he didn't have control over the books,  
11:44 15 but control is not always direct. It certainly can be  
16 indirect and it can be directed by the way we relate and/or  
17 present material to people who are charged with the  
18 responsibility of maintaining those records.

19 I place great weight in the government's  
11:44 20 argument these reports are not sufficiently reliable that I  
21 should receive Mr. West's arguments on them because he was  
22 the maker of this invention, he invented this crime, and he  
23 manipulated both sides of the ledger as he saw fit.

24 And, so, I am going to overrule objections  
11:44 25 that have been made to A and B. I believe C, D and E are

1 sustained on the government's agreement. F, G and H are  
2 overruled.

3 And, on that basis, the Court is going to find  
4 that the restitution to be made is \$3,561,166.11. To the  
11:45 5 extent that the Court has misstated something, that number  
6 is the number that the Court is relying upon and will use as  
7 the basis for the sentencing -- for purpose of sentencing in  
8 this matter.

9 Let me say one other thing and then we'll go  
11:45 10 to allocution.

11 Under the guidelines that have been  
12 established by Congress in this matter, the guidelines call  
13 for an offense level of 29, Criminal History Category I, and  
14 it calls for a range of punishment from 87 to 108 months'  
11:46 15 confinement, three-year term of supervised release and a  
16 fine, if appropriate, of 15- to \$150,000.

17 There is also the argument to be made in  
18 allocution as to whether or not the Defendant should be  
19 permitted to -- or should receive acceptance of  
11:46 20 responsibility, that argument, and we'll hear about that in  
21 just a minute.

22 But for purpose of the record, certainly, the  
23 argument that the defense is entitled to make, certainly, is  
24 based upon the statute that permits the Court to sentence  
11:46 25 the Defendant to not more than a 20-year term of

1 confinement, not more than a 250-thousand-dollar fine and  
2 not more than a three-year term of supervised release and a  
3 one-hundred-dollar special assessment, and the sentencing  
4 guideline range sets a range that Congress determines ought  
11:47 5 to be considered by the court.

6 Having said that, let's then proceed with  
7 allocution.

8 We'll start with you, Mr. Fazel. We'll hear  
9 then from Mr. Lewis and then, finally, we'll hear from your  
11:47 10 client.

11 MR. FAZEL: Thank you, Your Honor. If it pleases  
12 the Court.

13 First, I want to thank the Court for its  
14 patience with these cases and the amount of loss and so  
11:47 15 forth.

16 THE COURT: I made an "A" in accounting, but it was  
17 not legal accounting. All right.

18 MR. FAZEL: I did not.

19 I would like to discuss the issue of amount of  
11:47 20 loss and everything that we went into does not mean in any  
21 shape or form that Mr. West is before the Court today 'I  
22 didn't do this' or that 'I wasn't responsible for my  
23 conduct' or that 'I don't appreciate the fact that I stole  
24 \$3.6 million.' That's not what we're here today to do.

11:47 25 Those objections and my intent were to possibly demonstrate

1 to the Court that there were discrepancies between the  
2 numbers of the books.

3 That all being said, Mr. West has done a lot  
4 in order to convince the Court and Mr. Factor that he is  
11:48 5 wanting to pay back the restitution amount.

6 Mr. West has engaged in a business activity  
7 with Mr. Gunn, who is here, as the Court is aware, and they  
8 together have tried their best to put forth monies before  
9 this sentencing occurred to show their good faith and desire  
11:48 10 to pay back Mr. Factor as much as they can as quickly as  
11 they can.

12 Mr. West -- I've interviewed Mr. Gunn, and  
13 Mr. West has a plan for restitution that he wants to share  
14 with the Court. I do want the Court to appreciate -- and I  
11:48 15 think it does -- the fact that Mr. Gunn is here, the fact  
16 that the money is coming and the fact that we're just  
17 unfortunate that we don't have the money into the clerk's  
18 account yet, but we fully expect that to be there -- at  
19 least \$155,000 within the next three weeks.

11:49 20 I would like and I have offered Mr. Lewis to  
21 have an interview with Mr. Gunn. Mr. Gunn is more than  
22 welcome to talk with the government to reassure the  
23 government and enter into whatever documentation that the  
24 government seeks in order to make everybody feel better,  
11:49 25 that this is a genuine offer of restitution, which I would



1 submit to the Court is unusual because, you know, in these  
2 cases that I have been before the Court on many times and  
3 the Court has had many times, restitution is something that  
4 is not usually found, not usually returned, and I think it  
11:49 5 shows a level of commitment on Mr. West's part in wanting to  
6 show the Court that he's not just a cold-hearted guy that  
7 says, you know, 'I don't care. I am just going to do my  
8 time and I am going to get it over with and they're never  
9 going to get a penny out of me.'

11:49 10 The government in their responses made a  
11 couple of statements that I would like to address with the  
12 Court.

13 The first is the cars at the West drive. I  
14 know that's in their response.

11:49 15 Yes, there are, some people would say,  
16 luxurious. I agree. There is a Mercedes and a Jaguar.  
17 These are each at least ten years old. They have 250,000  
18 miles -- the Mercedes does. The other one is older.  
19 They're not worth very much.

11:50 20 The home that they live in is underwater.

21 Mrs. West, who is here today, Linda West, is  
22 here. There was a lot of people that wanted to come, but  
23 for financial reasons they couldn't bring a lot of people.  
24 So, Ms. West, Linda West, Mr. West's wife, is here present.

11:50 25 She will be happy -- I will just proffer to

1 you that she is doing everything she can to make sure that  
2 they have a home to stay in, but she has done everything she  
3 can to also update the Court. She has provided financial  
4 documents from tax records to bank records to everything  
11:50 5 that we supplemented the probation department with as soon  
6 as I became involved in this case. It took us a little  
7 while to put all that together, but the probation department  
8 and the government have a true, full accounting of  
9 everything that the Wests own. And this was done,  
11:51 10 obviously, not only for purpose that we have to but, also,  
11 to show, again, cooperation with the Court and the probation  
12 department, to show that he is genuinely trying to make  
13 restitution.

14 There was a comment in the government's  
11:51 15 objections about monies being taken from his school.

16 I can just represent to the Court that there  
17 is no issue with the school. The school was fully refunded  
18 their money. Any issues that had occurred have been taken  
19 care of. Ms. West and I had a long conversation and I have  
11:51 20 been assured that there simply is no outstanding issue with  
21 any school district and the Wests.

22 So, there are two pending indictments in --

23 THE COURT: Georgia.

24 MR. FAZEL: -- Georgia. And what I would like the  
11:51 25 Court to understand and appreciate is that I -- I understand

1 that there has to be punishment and consequences for  
2 conduct. There just has to be. And I appreciate that.

3 The balancing that the Court has to do on a  
4 daily basis is how much punishment do we give somebody.

11:52 5 And I wanted to impress upon the Court that  
6 even in custody while in Joe Corley he would receive FedEx  
7 boxes from Mr. Gunn. He would do worksheets. He would do  
8 up business proposals. He would help Mr. Gunn's business in  
9 order to be able to earn the money he has so far to be able  
11:52 10 to come to court and say, 'I have been able to come up with  
11 \$150,000. Now, I don't have it in front of me, but we'll  
12 have it soon.' And I think that's impressive, for a person  
13 to be in custody and still working, to demonstrate to the  
14 Court that's how devoted he is on restitution.

11:52 15 And, again, Ms. West is here to testify to  
16 that. I am sure her phone bills will testify to that, her  
17 FedEx bills will testify to that, that there was a lot of  
18 effort put in order to accomplish that.

19 So, I ask the Court to consider that.

11:52 20 The final thing I want to talk to the Court  
21 about is the three points for acceptance of responsibility.

22 Mr. West has done one of the dumbest things I  
23 have ever seen a defendant do and that is to simply not talk  
24 to their probation department about travel.

11:53 25 This was travel that was partially in order to

1 sell assets to help with restitution and, partially, for  
2 vacation. And there was nothing nefarious about it. It  
3 wasn't overseas. It wasn't, in anything that the Court  
4 hasn't seen, that I am sure the Court would have even  
11:53 5 granted, had a motion been filed with the Court.

6 I can promise you that he feels just beside  
7 himself because of that because it's threatened his ability  
8 to get three points for acceptance of responsibility. But  
9 the fact is that he has accepted responsibility in every  
11:53 10 element what the guidelines require him to do. He has  
11 worked his butt off to get money for restitution. He has  
12 done everything he can so that he can stand before the  
13 Court, somewhat of a head up, and say, 'You know, I have  
14 made a mistake, but I'm working on it.'

11:53 15 So, I would request that the Court strongly  
16 consider giving him the three points. It was truly not an  
17 obstruction that he committed. It was foolish. It was in  
18 violation of the order. I agree with that.

19 Mr. Lewis, with all due respect to Mr. Lewis,  
11:54 20 indicates that he lied to probation. I'm not sure if he did  
21 that. I think he might have not been forthright when was  
22 asked, but certainly told them, 'Hey. I was out of the  
23 location where I needed to be.'

24 For all those reasons I would request that the  
11:54 25 Court consider giving him the three points and sentencing

1 him to a level of sentence that would allow him to come out  
2 fast enough to make restitution, because the ability for him  
3 to do that is there. And, frankly, he's not employable by  
4 any other person because of his criminal history, but  
11:54 5 Mr. Gunn is willing to give him that opportunity.

6 And Mr. Gunn has impressed upon me that his  
7 company has grown by at least 5 to 10 percent per year based  
8 on Mr. West's efforts, and that's a lot. And, so, as income  
9 develops and he makes money, Mr. West makes money and,  
11:54 10 hopefully, Mr. Factor can get some restitution for what  
11 their family has gone through, for which we are deeply  
12 apologetic about.

13 So, I would ask the Court to consider a  
14 sentence way below the 86 months. I would ask the Court to  
11:55 15 consider something in the 46-month range, which would allow  
16 him to, hopefully, work while in custody as best as he can  
17 and then come out and continue his efforts to make  
18 restitution.

19 THE COURT: All right. Mr. Lewis.

11:55 20 MR. LEWIS: Thank you, Your Honor.

21 I'd like to start, Your Honor, with reading a  
22 brief e-mail that Mr. Factor sent to Mr. West on  
23 November 9th, 2012, just before the fraud was discovered  
24 because this e-mail illustrates many of the issues the Court  
11:55 25 has to decide today.

1 Mr. Factor wrote to Mr. West:

2 "Nathan, it is impossible for me to sleep. I  
3 worry over money issues for which I have entrusted such to  
4 you. You have always been faithful and dutiful, but I don't  
11:56 5 know where things stand with Airis' monies."

6 Mr. Factor then continues:

7 "Have you been borrowing money from Airis'  
8 accounts with the intent of paying it back to us but you  
9 haven't? Are you depleting my funds to cover your debts and  
11:56 10 investments? Are you taking out loans in Airis' name  
11 without my knowledge? Give me a call to clear the air on  
12 these issues. I am worried sick."

13 Mr. West responds -- and this is one of the  
14 several false and significant material misrepresentations --  
11:56 15 on November the 9th:

16 "Ron, as I have mentioned in my prior e-mail,  
17 I have been borrowing money from David and still owe David  
18 \$22,500, as I explained in that situation. Airis has  
19 approximately \$3.5 million in cash currently. No, I have  
11:56 20 not been borrowing money from the Airis accounts. What you  
21 might find is me advancing payments on behalf of Airis from  
22 my account and Airis paying me back. I can't take out loans  
23 in Airis' name. I'm not sure I can do that."

24 That's just one example of Mr. Factor  
11:57 25 attempting to get to the truth of the matter and Mr. West

1 continuing, in as late as November of 2012, to deceive Airis  
2 and Mr. Factor and the employees of Airis and the vendors of  
3 Airis who Mr. West was charged with making payments to pay  
4 the bills on behalf of Airis.

11:57 5 As I stated previously, Your Honor, this was a  
6 complex fraud scheme by Mr. West where he had two sets of  
7 books. He concealed the fraud from his own employees,  
8 including Ms. Dykes, who believed what Mr. West told her.  
9 He concealed the fraud from Airis, its employees, its  
11:57 10 vendors and from the outside accounting firm that relied  
11 upon the raw data from Mr. West and Westtree in providing  
12 financial statements to Airis. Harshman Phillips was the  
13 outside accounting firm. They worked with Mr. West for  
14 several years and they believed the numbers that he provided  
11:58 15 were real, legitimate numbers.

16 But it's clearly a pattern of fraud and  
17 deception, Your Honor, in this case, including as alleged in  
18 the indictment -- There are money laundering charges in the  
19 indictment where the government alleges that Mr. West took  
11:58 20 money from Airis' accounts to pay money back to the Wilson  
21 Creek Foundation, the PTA that Mr. West participated in.  
22 Mr. West stole money from the PTA, parent-teachers  
23 association, the foundation, and he put that money back in  
24 their accounts by stealing money from Airis. That's alleged  
11:58 25 in the indictment.

1                   He lied to Airis. He lied to the vendors of  
2                   Airis. He lied to the outside accounting firm. He made  
3                   false misrepresentations to his own employees.

4                   And on this issue of points for credit for  
11:58 5                   acceptance of responsibility:

6                   Certainly, Mr. West has pled "guilty" in this  
7                   case. However, he has not obeyed and not complied with the  
8                   orders of this court, specifically the order setting  
9                   conditions of release.

11:59 10                   As the Court is well aware, Mr. West is  
11                   currently in custody as a result of a motion that was filed  
12                   by the government to revoke his bond.

13                   March 6th of 2017 the probation officer in the  
14                   Northern District of Georgia provided a letter to the Court.  
11:59 15                   In the letter, the probation officer stated that, when he  
16                   initially contacted Mr. West about his unauthorized travel,  
17                   Mr. West initially denied having traveled without  
18                   permission. He denied that he traveled without the Court's  
19                   permission. That's what he told the probation officer.

11:59 20                   That's not an example, Your Honor, of someone who has  
21                   clearly demonstrated acceptance of responsibility. Not only  
22                   did he travel without permission when he certainly could  
23                   have easily filed a motion or his lawyer could have filed a  
24                   motion asking for permission. When an officer -- the  
12:00 25                   probation officer contacted Mr. West and asked him about



1 that travel, he told -- again, he provided a false statement  
2 to the probation officer denying that he traveled. He then  
3 later in that conversation admitted that he did travel,  
4 requiring the government to file a motion. There was a  
12:00 5 hearing on the motion. The Court heard the motion and the  
6 Court agreed and entered an order revoking his bond.

7 You know, so there was an additional effort,  
8 frankly, by the probation office and by the government to  
9 ensure that Mr. West would continue to comply with the  
12:00 10 orders of the Court.

11 He's clearly not demonstrated an acceptance of  
12 responsibility. And, frankly, he has not helped the  
13 government because he has not, in my opinion or the  
14 government's opinion, provided truthful information about  
12:00 15 restitution because he hasn't paid anything in restitution.

16 As is contained in the PSR, Mr. West is  
17 married. He has three children. He lives in a one-million-  
18 dollar house. He still lives in that house -- or his family  
19 does. They still own that house. It's true they may be  
12:01 20 behind in the payments, but they still live in that house.  
21 His three kids are currently in private school. We hear  
22 from Mr. Factor that one of his employees had to withdraw  
23 his children from private school because of what Mr. West  
24 did, but his kids continue to be in private school.

12:01 25 He has not taken this matter seriously, Your

1 Honor. He has made no substantial efforts towards paying  
2 restitution, because, although there is an order allowing  
3 the clerk to accept payments of restitution prejudgment,  
4 there have been no monies whatsoever, not a dime, that's  
12:01 5 been paid towards restitution.

6 For these reasons, Your Honor, we respectfully  
7 ask that you sentence Mr. West at the high end of the  
8 punishment range.

9 THE COURT: I take that to mean that the plea  
12:01 10 agreement that the government had with the defense -- you  
11 consider that breached and, therefore, you're not  
12 recommending the two-point adjustment. Not only that, but  
13 you're objecting to the additional one point.

14 MR. LEWIS: Yes, Your Honor.

12:02 15 THE COURT: So that the record is clear.

16 MR. LEWIS: That's correct.

17 THE COURT: There is a statement regarding the  
18 exact understanding or agreement.

19 All right. Mr. West, you may proceed at this  
12:02 20 time. Do you have some statements you want to make to the  
21 Court?

22 MR. FAZEL: Your Honor, may I make just a rebuttal  
23 just --

24 THE COURT: As to which of those?

12:02 25 MR. FAZEL: As to the breach of the plea agreement

1 and of the private schools.

2 THE COURT: And -- I'm sorry?

3 MR. FAZEL: And the private school comment that the  
4 government made.

12:02 5 THE COURT: Well, I think Mr. West can talk to  
6 that. I am sure he's aware of the circumstances --

7 MR. FAZEL: Yes, sir.

8 THE COURT: -- personally aware of those  
9 circumstances.

12:02 10 Go ahead and proceed, Mr. West.

11 THE DEFENDANT: Your Honor, I'd like to start with  
12 just answering a few questions we talked about here. I will  
13 kind of work my way backwards.

14 As it relates to my three children in private  
12:02 15 schools, that is not correct. My two daughters go to a  
16 public high school right across the street from where I  
17 live. My son does go to a private school, but he was moved  
18 there due to some learning issues and that is why he is  
19 going to school at a private school.

12:03 20 As relates to my conversation with the  
21 probation officer, that was a face-to-face conversation in  
22 his office where I sat down on the sofa in his office. He  
23 was across the desk and he asked me -- well, he first called  
24 me and said, "Hey. I need to see you first thing today."

12:03 25 And, so, I drove over that morning and met with him. And he

1 did ask me. He said, you know, "Mr. West, have you been  
2 traveling?"

3 And, you know, I did hesitate and I said,  
4 "Well, as a matter of fact, I did go to North Carolina."

12:03 5 And then I told him that I also went to Florida. And I did  
6 tell him that. He didn't ask about Florida and I told him  
7 that.

8 So, I, you know... Anyway, that's the answer  
9 to that question.

12:03 10 But going back to the general ledgers and the  
11 two sets of books and those conversations, the Westtree  
12 general ledger and the Airis general ledger were done by the  
13 same people in the office and Ann Dykes was one of those  
14 folks. Those two ledgers had to match because of the fact  
12:04 15 the outside accounting firm who did our taxes, who did the  
16 reviews, the compilations -- they had to match because of  
17 the loans back and forth between Airis and my company.

18 So, when we're talking about Ann Dykes and  
19 others, they were the ones keeping the books. Yes, I was  
12:04 20 over them. The system we had was Viewpoint, an accounting  
21 system that I never entered one entry into that system, and  
22 the -- Anyway, so just to clarify that, that was that.

23 But, anyway, I'll -- I'd like to say a few  
24 things to the Court about myself and my actions that have  
12:05 25 occurred.

1 So, Your Honor, thank you for allowing me to  
2 have this time to address the Court and the many people who  
3 have been affected by my actions. Many people have been  
4 hurt by me and my actions and I appreciate you allowing me  
12:05 5 the time to apologize to them.

6 First, I would like to apologize to my family,  
7 my children, who I love very much. They're not here today.  
8 Because they are minors they're in school, where they need  
9 to be. They are not here today. My twin daughters Caroline  
12:05 10 and Lauren are 16 and are sophomores in high school, and my  
11 son Zachary is 12 and he's in 6th grade. Thankfully, I have  
12 been a part of their lives on a daily basis since their  
13 birth, and I do realize that being away from them this past  
14 year has been difficult for them and for me. I have missed  
12:05 15 them very much. I am also very sorry how their lives have  
16 been affected by my actions.

17 Next I would like to apologize to my wife  
18 Linda. We have been married for 28 years and she has been  
19 very helpful to me this past year. She's worked many hours  
12:06 20 outside of her own job in working with Mr. Fazel, my  
21 attorney, and our CPA to deliver the many items the  
22 prosecutor and the probation office have requested. I know  
23 it's been hard on her being a single parent while also  
24 holding down a full-time job.

12:06 25 To my wife and children and my mother as well

1 as my extended family, I'm sorry for the things that I have  
2 done.

3 Next, I would like to apologize to Mr. Factor,  
4 the Factor family and the company for stealing from Ron.

12:06 5 The case against me as well as my plea  
6 agreement is that I stole 3.6 million from Airis through an  
7 embezzlement scheme, and I have accepted the responsibility  
8 for this and, again, in front of everyone here, I am truly  
9 sorry for this error in my judgment over these years.

12:07 10 From the beginning when I met with the FBI in  
11 2014, the two agents who came to my home in Georgia  
12 unexpectedly -- I did not turn them away but invited them in  
13 and answered all their questions. In my conversation at the  
14 time I took full responsibility for what I had done at that  
12:07 15 time.

16 The financials of Airis as well as my company,  
17 Westtree, were tracked and monitored not only by Airis/  
18 Westtree accounting but were overseen by the external  
19 accounting firm who would annually recommend how entries  
12:07 20 should be made to our books.

21 I have continued to the best of my ability to  
22 work for a construction firm to earn money while I have been  
23 incarcerated to go towards restitution. As one can imagine,  
24 working from the BOP can be extremely difficult, especially  
12:07 25 in an era when timely responses are needed.

1 I began working with this firm in 2015 as a  
2 way to begin the process of making money to pay back the  
3 loss amount. The firm was small, but we had potential of  
4 growing as the economy is expanding. My hope is to continue  
12:08 5 to work and grow with this company, as I do believe I can  
6 put forth a meaningful plan to pay back my restitution.

7 I am 52 years old and still have many years to  
8 work with an economy that continues to grow and especially  
9 in the areas of multi-family, senior living and healthcare,  
12:08 10 areas that we are currently working in now. I would expect  
11 over the next few years that I can pay back the money owed  
12 to Mr. Factor. We currently have projects in the pipeline  
13 that could either cover the amount or allow the company to  
14 borrow the money to pay it off sooner.

12:08 15 Your Honor, I appreciate you letting me say  
16 all this in court today in hopes that I can repay this loss  
17 to Mr. Factor and his family in a timely manner before I  
18 grow too old and will not be able to do it.

19 Thank you.

12:08 20 THE COURT: I have got a couple of questions.

21 Do you own an interest in the Gunn  
22 companies --

23 THE DEFENDANT: No, sir.

24 THE COURT: -- partnership interest? Does your  
12:08 25 wife own an interest in it?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you have an undisclosed interest in  
3 it?

4 THE DEFENDANT: We -- No. I don't -- Tell me  
12:09 5 exactly what you're asking me.

6 THE COURT: Well, an undisclosed interest would be  
7 a handshake. You and I own this 50-50. Can't put it on the  
8 books because my wife might take it in a divorce or because  
9 I might lose it in a criminal proceeding.

12:09 10 THE DEFENDANT: No, sir. The agreement we have --  
11 and it's in the spreadsheet here -- is that I get a  
12 percentage of the revenues of the projects. So,  
13 hypothetically, if a project is a million dollars, I get  
14 2 percent of that as a fee.

12:09 15 THE COURT: So, it's a project-by-project source of  
16 income.

17 MR. FAZEL: It's a construction company, Your  
18 Honor.

19 THE COURT: Yeah. I get that. I know a little bit  
12:09 20 about construction. I understand the way that he is  
21 suggesting that he is paid.

22 I believe that you acknowledged two, maybe  
23 three -- I'm not sure -- two times that you were -- that you  
24 traveled outside of the Southern District of Texas.

12:10 25 THE DEFENDANT: Well --



1 THE COURT: Was it two or three?

2 THE DEFENDANT: I live in Georgia and, yes, I have  
3 traveled out --

4 THE COURT: You were living in Georgia, but your  
12:10 5 restriction was to whatever that district is in Georgia.  
6 Correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. So, you traveled outside of  
9 Georgia. The same difference is out of Houston. But you  
12:10 10 traveled outside of Georgia, outside of that district in  
11 Georgia, on two or three occasions?

12 THE DEFENDANT: On two.

13 THE COURT: All right. Once to North Carolina?

14 THE DEFENDANT: And once to Florida. But, I mean,  
12:10 15 to clarify, I went to Charlotte for a meeting in North  
16 Carolina, and then from there I went over to Highlands,  
17 North Carolina, which is another location in North Carolina.

18 THE COURT: Same travel or a different time?

19 THE DEFENDANT: Same.

12:10 20 THE COURT: And then you went to Florida on a  
21 different occasion?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. And when you were signed up  
24 for this bond and release, you were told that you could not  
12:11 25 travel without permission not from probation but from me.

1 Right?

2 THE DEFENDANT: Yes.

3 THE COURT: Yeah. So, it's not about probation at  
4 all. It's about your representations or lack of disclosure  
12:11 5 to the Court that is a concern to the Court. You understood  
6 that?

7 THE DEFENDANT: Yes.

8 THE COURT: And you did not disclose to me or to  
9 the court that you were travelling or that you desired to  
12:11 10 travel. You agree with that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: You would certainly appreciate the fact  
13 that, whether your intentions were nefarious or not, the  
14 fact that you failed to disclose it would lead me, or any  
12:12 15 person who seemed to be thinking along the lines of why  
16 would you do this, with the idea that there was something  
17 nefarious, that you had some personal motivation that you  
18 wanted -- that you did not want to disclose, the business of  
19 whatever sort was information you did not want to disclose.  
12:12 20 Correct? Wouldn't you think that would be the way that I or  
21 some other person might see those ventures?

22 (Mr. Fazel speaks to the Defendant)

23 THE COURT: Do you understand my question?

24 THE DEFENDANT: Yes. Yes, sir. Yes. Yes.

12:12 25 THE COURT: "Yes", you understand the question?

1 THE DEFENDANT: Yes, sir. And I am responding  
2 "yes" to your question.

3 THE COURT: Yeah. So, I would be concerned that,  
4 if you're doing something or continuing to do something for  
12:12 5 which you have been indicted, whether in federal or state  
6 court, that that might be something that I would say, no, I  
7 don't want you to travel to North Carolina or to Florida. I  
8 want you to stay where you are and let that fall apart. You  
9 understand that?

12:13 10 THE DEFENDANT: Yes, sir.

11 THE COURT: Well, you have made something of the  
12 idea that the books both at Airis and at Westtree should be  
13 in sync. And my concern is that, when you're taking money  
14 out of a company and you are not interested in the persons  
12:13 15 knowing what you're doing, you can cover it by some loan  
16 document. You can cover it by some credit at another  
17 location. There are a number of accounting ways that you  
18 can go about balancing those books and still -- and actually  
19 steal the company blind, aren't there? And the books are  
12:13 20 going to be balanced, aren't they?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Sure. So, I don't want you to talk  
23 about how that can be done. I am not interested in that. I  
24 am just suggesting that the fact that the books can look the  
12:14 25 same, both books are reflecting the same credits, debits or

1 whatever payouts, assets and liabilities -- the fact that  
2 they might be similar in their reflection doesn't mean that  
3 something nefarious is not going on, does it?

4 THE DEFENDANT: But in -- in the --

12:14 5 THE COURT: No. It doesn't mean that something  
6 nefarious is not going on. Because that's exactly what  
7 happened here. Right?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. You got books that are  
12:14 10 showing balancing on both sides and yet something terrible  
11 is happening behind the scenes.

12 And, so, when you say that, it doesn't make or  
13 register with me as being something that you should be  
14 credited with having done, except that suggests to what  
12:15 15 Mr. Lewis is suggesting, that there is some sophistication  
16 to how you managed to do these books or had them reflected.  
17 That's all it really suggests to me.

18 Does it suggest something different to you?

19 (Mr. Fazel speaks to the Defendant)

12:15 20 THE DEFENDANT: I guess the entries that were made  
21 in all the books were actual items that occurred and they  
22 were entered properly. If there was money paid to a vendor  
23 or if there was money moved from an account, it was  
24 registered.

12:15 25 The general ledgers of the companies show all

1 these transactions that occurred and they do agree to the  
2 report that Ann Dykes did prepare.

3 The only difference is the very last one where  
4 the general ledgers of the two companies were not exactly  
12:16 5 the same, because if you take what she did and take both of  
6 the general ledgers and go through them, they're exactly the  
7 same entries all the way through.

8 THE COURT: The company was bleeding a number of  
9 years even though the books were reflecting that they were  
12:16 10 in sync. Right?

11 THE DEFENDANT: Correct.

12 THE COURT: So, I'm not so much concerned about the  
13 accounting principles and the process that that goes through  
14 because different people can agree or disagree about how  
12:16 15 things should be put on the ledger.

16 But there is no doubt that the company was  
17 bleeding. Correct?

18 THE DEFENDANT: Correct.

19 THE COURT: All right. I don't have much, if  
12:17 20 anything, to say concerning the question of your payment.  
21 Hopefully, you will pay some money to -- pay the  
22 restitution.

23 During another life that I had, I represented  
24 several construction companies, underground utilities and  
12:17 25 highway construction and so on, and I understand

1 construction and how monies come and go and don't come and  
2 go when you think they're going to come.

3               Without regard for that and whatever interest  
4 that you might have on the books at the Gunn facility or  
12:17 5 Gunn companies, it's still within your power to make those  
6 determinations. You would agree with that? As to whether  
7 or not you pay or don't pay. Right?

8               THE DEFENDANT: Yes.

9               THE COURT: Right. And whether or not the Gunn  
12:18 10 company pays it to you or pays it to your wife or pays it in  
11 trust to your children or any other way that it chooses to  
12 do it, it's still -- it's within your power. And that's not  
13 something that I should be concerned about in terms of  
14 whether or not you're agreeing to pay, should I?

12:18 15               THE DEFENDANT: That is correct. Yes.

16               THE COURT: All right. Regarding the restitution  
17 amount, I believe I have already stated that it's  
18 \$3,561,166.11. And that fund or that amount of money does  
19 require the establishment of a separate account, if any  
12:18 20 payments are made, but certainly they should be made to --  
21 or as directed by the probation officer when and if those  
22 funds become available, if they do.

23               MR. FAZEL: Yes, Your Honor.

24               THE COURT: I grew up in the country and we had a  
12:19 25 term, Mr. West, that we used. At least, I learned it from

1 my mother. She said, "Talk is cheap, but it takes money to  
2 buy land." And I think what she meant by that was that she  
3 had heard enough stories to know that, until the money is on  
4 the line, until the money is on the table, the talk about  
12:19 5 money is really good conversation you can have over coffee  
6 or tea and a biscuit or something, but it doesn't make any  
7 cents -- c-e-n-t-s -- at all. Right?

8 THE DEFENDANT: Yes.

9 THE COURT: Having said that, my concern and  
12:19 10 anguish with you had to do with the fact that you, a well  
11 educated man, would take such great privilege with the Court  
12 and then think life is so simple and you -- being so  
13 selfish, that you would put not just your family at risk but  
14 other families at risk.

12:20 15 This is the kind of collateral damage that no  
16 one can ever imagine and measure because it's just keeps --  
17 Kind of like throwing a rock in the pond. It just keeps  
18 reverberating and it goes infinitely to the end of all time.  
19 I mean, who can go back and say how much Rome would be worth  
12:20 20 if it hadn't burned or whatever figment of our imagination  
21 we might rely upon?

22 So, we do great damage to ourselves and to our  
23 families and to other families when we engage in fraud and  
24 deceit. And, so, that's something you will have to come to  
12:20 25 terms with in your head as well as in your heart, because

1 this conviction has to be downloaded from just simply  
2 saying, you know, 'I did something wrong' to a point where  
3 there is a conviction that says, 'I didn't just do something  
4 wrong. I've got to do something right,' see, because that's  
12:21 5 the other side of the ledger from an accounting perspective.

6 Pursuant to the Sentencing Reform Act of 1984  
7 it's the judgment of the Court that the Defendant, Daniel  
8 Nathan West, is hereby committed to the custody of the  
9 Bureau of Prisons to be imprisoned for a term of 108 months'  
12:21 10 confinement.

11 Upon release from imprisonment you're placed  
12 on supervision for a term of three years.

13 Within 72 hours of your release you're to  
14 report to the person in probation in the district where you  
12:21 15 are released within 72 hours.

16 You're to comply with the terms of supervised  
17 release by not committing another federal, state or local  
18 crime and complying with the standard conditions of  
19 supervised release that have been adopted by this court.

12:21 20 And, in addition, you shall comply with the following:

21 You're to provide the probation officer with  
22 access to any requested financial information and authorize  
23 the release of any financial information that the probation  
24 officer might ask of you.

12:22 25 You should not incur new lines of credit, open



1 any additional lines of credit or seek the approval of any  
2 lines of credit with anyone without first seeking the  
3 approval of the probation officer, who will be in contact  
4 with me about these things.

12:22 5 You're prohibited from employment or acting in  
6 a fiduciary role or in a role of supervision regarding the  
7 finances of some other person, third party, handling of  
8 other parties' funds or accounting concerns without first  
9 discussing and getting the approval of the probation  
12:22 10 officer.

11 You're ordered to pay restitution in the  
12 amount of \$3,561,166.11, all of that payable as follows:  
13 Airis is due \$3,061,166.11 and Travelers is due \$500,000.  
14 That totals the number that I gave earlier.

12:23 15 You're further ordered to pay the defendant --  
16 I'm sorry. You're further ordered to pay the United States  
17 a special assessment in the amount of \$100.

18 The Court is not going to enter a fine or  
19 order you to pay a fine because I think you have -- your cup  
12:23 20 runs over. It's full. If you pay this restitution you will  
21 have done a great deed. So, therefore, there will be no  
22 order by the Court to pay a fine.

23 But I expect that if you do not pay the  
24 restitution and I expect that if I learn that you're making  
12:23 25 lots of money and that you're nickel-and-diming this

1 circumstance, I will be considering and concerned about  
2 whether you should remain out after you have served your  
3 time or whether or not you should be sentenced to greater  
4 time, because those are conditions of a financial crime that  
12:24 5 has been committed, that you live up to your financial  
6 obligation. That is very important to me and to your family  
7 as well.

8 Anything else from the government?

9 MR. LEWIS: Just the United States moves to dismiss  
12:24 10 the remaining counts in the indictment, Counts 2 through 12,  
11 Your Honor.

12 THE COURT: 2 through 12 inclusive?

13 MR. LEWIS: Yes, Your Honor.

14 THE COURT: Hold on just one second.

12:24 15 Let me, I believe, correct the record because  
16 I believe Mr. West pled to a criminal information, not the  
17 indictment, not Count 1 of the indictment. Correct?

18 MR. LEWIS: No. The indictment, Your Honor.

19 THE COURT: It was the indictment?

12:25 20 MR. LEWIS: Yes. There was a criminal information  
21 filed, but then there was an indictment subsequently filed.

22 THE COURT: All right. But the plea was to Count 1  
23 of the indictment --

24 MR. LEWIS: Correct.

12:25 25 THE COURT: -- not Count 1-S.

1 MR. LEWIS: Correct.

2 THE COURT: And he did not plead to the criminal  
3 information, unless that is consistent and the same as  
4 Count 1 of the criminal indictment. Am I correct?

12:25 5 MR. LEWIS: It may be consistent. I do have a copy  
6 of the plea agreement, and it specifically refers to he's  
7 pleading guilty to Count 1 of the indictment.

8 THE COURT: Very good. So, the earlier filed  
9 criminal information -- I believe it was filed earlier --  
12:25 10 being Cause No. 15-515, which eventually became the criminal  
11 indictment number, is one and the same, at least in respect  
12 to Count 1 or at least he's pled to Count 1.

13 So, there is no problem with it being  
14 inconsistent or having any problem with the information, the  
12:26 15 paperwork?

16 MR. LEWIS: That's correct.

17 THE COURT: That's what I wanted to make sure. I  
18 apologize for that. It was brought to my attention. I want  
19 to make sure we accounted for that.

12:26 20 You have 13 days from the date of  
21 sentencing --

22 Yes, ma'am.

23 PROBATION OFFICER: Your Honor, would the Court  
24 impose a payment schedule for restitution?

12:26 25 THE COURT: I think the judgment should be for the

1 full amount. And you're asking whether or not there should  
2 be some payment schedule following that.

3 PROBATION OFFICER: Yes, Your Honor.

4 THE COURT: I think I will look at that later on.

12:26 5 I will wait to see if there are any payments made and then  
6 bring that to my attention. So, I defer -- or I will  
7 withhold ruling on that at this time. I am just finding  
8 that the judgment in the full amount should be entered at  
9 this time. I'd like to see what the capabilities are, if  
12:26 10 any, and what Mr. West is or is not going to do, and then I  
11 can determine best whether or not there should be some  
12 payment schedule put in place.

13 I know you reserve the right to object to it.  
14 You can object, obviously, counsel, to my not putting one in  
12:27 15 place at this time, but I don't want to speak to what he  
16 should be paying or could pay when I know that he has no  
17 income at this point, and that his promise of a payment from  
18 other income does not do the Court any good.

19 You know, I am going to reconsider that. But  
12:27 20 let me finish and then I will come back.

21 The judgment -- you have got 13 days from the  
22 date of the entry of the judgment to give notice of appeal,  
23 if you choose to do so.

24 I want the fact that the plea agreement has  
12:28 25 been breached and rescinded by the government to be made a

1 part of the record so that, if there is a basis for appeal,  
2 you have understanding specifically what area or areas of  
3 concern you might have. You have the right to do that.

4 Appointed or paid?

12:28 5 MR. FAZEL: Appointed, Your Honor.

6 THE COURT: Appointed counsel follows through with  
7 this if you choose to appeal. Certainly, you can choose to  
8 not continue with his service, and the Court would appoint  
9 new counsel to represent you on any appeal, assuming that  
12:28 10 you choose to go through with it. For sure, get advice of  
11 counsel before you do that so that you might be best  
12 informed of these matters.

13 I said I might -- I think I changed my mind.

14 I am going to take up the --

12:28 15 Is it your proffer or offer to pay that  
16 counsel has related to this court, Mr. West?

17 THE DEFENDANT: Yes.

18 THE COURT: Then, here's what the Court is going to  
19 do. The Court is going to order you to pay \$150,000 toward  
12:29 20 this restitution on or before April 30. That gives you  
21 45 days within which to make that payment. And following  
22 that payment of \$150,000 the Court is going to order you to  
23 pay from any funds earned while in prison a reasonable  
24 amount of not less than 50 percent of any earnings you might  
12:29 25 earn while in federal prison and not less than 50 percent of

1 any monies that might be coming your way as it relates to  
2 any other projects for which you have your hands in that you  
3 are earning through the Gunn company or any other entity,  
4 not less than 50 percent of any of those funds throughout  
12:30 5 the term of your confinement.

6 Following the term of confinement, the Court  
7 is going to set the amount of monthly payment at \$3,000 per  
8 month until paid. Not less than \$3,000 per month.

9 Do you understand my terms?

12:30 10 PROBATION OFFICER: Yes, Your Honor.

11 THE COURT: All right. Anything else, gentlemen?

12 MR. LEWIS: No, Your Honor.

13 MR. FAZEL: Just briefly, Your Honor.

14 I know this is something the BOP does, but I  
12:30 15 would ask the Court to consider recommending placement close  
16 to -- in Georgia close to his family, obviously, because he  
17 has no family or kinship here in Houston. So, any -- That  
18 would be my first request.

19 THE COURT: I don't object to that -- I do not make  
12:30 20 the recommendation because I leave it to BOP to determine,  
21 obviously, the front side of the initial incarceration-and-  
22 holding part of it. I am confident, however, that they will  
23 at some point make sure that Mr. West is near his family so  
24 they might visit with him. And, of course, as you know and  
12:31 25 you have just acknowledged, it is a matter within the

1 discretion of the BOP.

2 MR. FAZEL: And just for clarity of the record,  
3 both my objections to sophisticated means and my three-point  
4 objection for acceptance have been overruled by the Court?

12:31 5 THE COURT: Yes.

6 MR. FAZEL: Thank you, Your Honor.

7 THE COURT: Thank you, gentlemen. You may be  
8 excused --

9 I'm sorry.

12:31 10 PROBATION OFFICER: Your Honor, I have one question  
11 about -- when Mr. West is released from custody is that  
12 payment to be made immediately or --

13 THE COURT: 30 days. I'm sorry.

14 PROBATION OFFICER: 30 days?

12:31 15 THE COURT: Yeah, 30 days from the date of release.

16 PROBATION OFFICER: Thank you, Your Honor.

17 THE COURT: I apologize.

18 And for the benefit of the full record, the  
19 \$3,000 per month begins 30 days after the date of entry.

12:31 20 The hundred-dollar special assessment is due and payable  
21 immediately. The \$150,00 is due and payable on or before  
22 April 30. And 50 percent of any earnings that he might make  
23 as relates to the projects that he's involved in is to be  
24 paid to probation toward this restitution.

12:32 25 MR. FAZEL: Understood.

1 THE COURT: Thank you, gentlemen.

2 MR. LEWIS: Thank you, Your Honor.

3 MR. FAZEL: Thank you. May I be excused, Your

4 Honor?

12:32 5 THE COURT: You may.

6 MR. FAZEL: Thank you.

7

8 COURT REPORTER'S CERTIFICATE

9 I, BRUCE SLAVIN, certify that the foregoing is a  
10 correct transcript from the record of proceedings in the  
11 above entitled matter, to the best of my ability.

12

13 s/Bruce Slavin  
14 BRUCE SLAVIN, RPR, CMR

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